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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,632	01/24/2005	Andrea Calvi	007511.00014	7405
22907 7590 09/29/2009 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
BENOIT, ESTHER				
ART UNIT		PAPER NUMBER		
2442				
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09/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/522,632

**Applicant(s)**

CALVI ET AL.

**Examiner**

ESTHER BENOIT

**Art Unit**

2442

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9,10,12-21,23 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,10,12-21,23 and 32-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendments***

1. Claims 1-7, 9, 10, 12-21, 23 and 32-39 are pending in this application. Claims 1, 12-13, 32, and 37 have been amended.

### ***Response to Arguments***

2. Applicant's arguments, see Remarks, filed 7/17/2009, with respect to the rejection(s) of claim(s) 1 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Raisanen (US 2004/0071095 A1) and Raisanen et al. (2003/0152028 A1).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 9, 10, 12-21, 23 and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raisanen (US 2004/0071095 A1), hereinafter Raisanen 2004, in view of Friedrich et al. (5,958,009), and further in view of Raisanen et al. (2003/0152028 A1), hereinafter Raisanen 2003.

**With respect to claim 1**, Raisanen 2004 discloses:

- monitoring operation of an application by a monitoring apparatus through a network interface ([0030])
- monitoring the network interface for data packets ([0030])
- receiving, at the monitoring apparatus, a data packet as the data packet is being transmitted between two network nodes, other than the monitoring apparatus, through the network interface ([0030])

Raisanen 2004 does not explicitly disclose:

- receiving a trigger signal at the monitoring apparatus from a remote network entity in response to a critical situation corresponding to the quality of service of the application
- in response to receiving the trigger signal transmitting from the monitoring apparatus, the stored network data to a remote network archive

However, Raisanen 2003 discloses:

- receiving a trigger signal at the monitoring apparatus from a remote network entity in response to a critical situation corresponding to the quality of service of the application ([0040], *where alert is sent to QOS manager to indicate a QOS level has been exceeded*)

- in response to receiving the trigger signal transmitting from the monitoring apparatus, the stored network data to a remote network archive ([0056], *QOS database*)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Raisanen 2004 with the teachings of Raisanen 2003 to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

Raisanen 2004 and Raisanen 2003 do not explicitly disclose

- filtering the received data packet
- storing network data received through the network interface in a buffer of the monitoring apparatus, the network data indicative of a behavior of the network

However, Friedrich discloses:

- filtering the received data packet (Col. 8, lines 37-62)
- storing network data received through the network interface in a buffer of the monitoring apparatus, the network data indicative of a behavior of the network (Col. 8, lines 37-62)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Raisanen 2004 and Raisanen

2003 with the teachings of Friedrich filter data packets and store network data in a buffer, *because* it will allow the buffers to only receive data that is related to a condition in the network.

**With respect to claims 13, 32, and 37**, the limitations of claims 13, 32, and 37 are similar to the limitations of claim 1 above. Therefore, the claims are rejected for the same reasons as claim 1 above.

**With respect to claims 2, 4-6, 12, 14, 16-17, 19, 21, 23, 33, 35-36, and 39**, the limitations of these dependent claims do not introduce any additional features not found in their independent claims 1, 13, 32, and 37. Therefore, the claims are rejected for the same reasons as their independent claims above.

**With respect to claims 3, 15, 34, and 38**, Raisanen 2004 discloses measuring the data indicative of the behavior of said network in synchronized fashion with at least one other monitoring apparatus ([0032])

**With respect to claims 7 and 18**, Raisanen 2004 discloses the activation function and said control function co-operate with each other according to an agent/server configuration, in which said activation function acts as an agent and said control function acts as a server ([0020])

**With respect to claims 9 and 20**, Raisanen 2004 discloses storing data indicative of the behavior of said network includes storing data relating to a given time window ([0032], *transmission interval*)

**With respect to claim 10**, Raisanen 2004 does not disclose at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel.

However, Raisanen 2003 discloses at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel ([0040, *where alert is sent to QOS manager to indicate a QOS level has been exceeded*])

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Raisanen 2004 with the teachings of Raisanen 2003 to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.  
September 22, 2009

/Andrew Caldwell/  
Supervisory Patent Examiner, Art Unit 2442